RIGHTS OF VICTIM AND THE CRIMINAL JUSTICE SYSTEM IN INDIA: AN ANALYTICAL STUDY

A Ph.D. Research Synopsis submitted to Himachal Pradesh National Law University, Shimla

Supervisor:
Dr. Girjesh Shukla

Submitted By:
Ms. Ritu Panta
9020181903
Ph.D. Research Scholar

HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA
16 MILE, SHIMLA-MANDI NATIONAL HIGHWAY, GHANDAL
DISTRICT SHIMLA, HIMACHAL PRADESH-171014
Ph. 0177-2779802, 0177-2779803, Fax: 0177-2779802
Website:http://hpnlu.ac.in

INDEX

Sr. No.	Contents	Page No.
1	INTRODUCTION	01
2	LITERATURE REVIEW	2-3
3	RESEARCH GAPS	03
4	STATEMENT OF PROBLEM	3-4
5	OBJECTIVES	04
6	RESEARCH QUESTIONS	04
7	SIGNIFICANCE OF STUDY	05
8	RESEARCH METHODOLOGY	05
9	TENTATIV CHAPTERIZATION	5-6
10	BIBLIOGRAPHY	07

Rights of Victim and the Criminal Justice System in India: An Analytical Study

INTRODUCTION

Criminal justice system is primarily aimed to protect the rights of the individuals and the State against the unlawful acts by the criminals who violate the basic norms of society. This protection is sought to be achieved and ensured by punishing the accused in accordance with the provisions of law. In order to ensure that the innocent persons are not victimized, certain rights and privileges have been granted to the accused person so that he can defend himself and his innocence can be proved. Apart from various statutory rights guaranteed to an accused, various constitutional rights have also been guaranteed to him so that he can be reasonably protected against any sought of victimization at the hands of the law enforcement agencies. Also the courts have from time to time directed the State to provide all the necessary facilities and to ensure that the human rights of prisoners are not violated.

The modern criminal law, which is supposed to represent the social ambitions and norms, is designed to punish as well as to reform the criminal but it overlooks an important by product of crime, the victim. The victim who plays the key role in the crime scenario is forgotten and neglected. The victim's role has been reduced largely to one of reporting offences and giving evidence."Tears shed for the accused are traditional and 'trendy' but has the law none for the victim of crime, the unknown martyr?" [1] The question and revealing remarks by Hon'ble Justice Krishna Iyer on plight of victims in criminal justice system clearly depicts the lacuna and ignorance of the criminal justice system towards the victims. Reason for this is the adversarial nature of the criminal justice system in India. There is presumption of innocence even when the accused appears to be palpably guilty. The investigation has to discharge the burden of proving the guilt of the accused beyond reasonable doubt. Victim despite being the primary and direct witness to crime is treated as a junior partner of the Police and the prosecution in India. His participation in the post crime investigation and procedures is minimal and negligent.

The adversarial system in India ensures maximum rights to the accused and reduces the victim to a mere passive spectator to the investigation and court proceedings being undertaken by the police and the courts respectively. Though various statutory rights have been guaranteed to the victim, practically speaking the rights assigned to the victim are subservient to the will and monopoly of the prosecution. Through this work the researcher attempts to understand and critically analyze the position of the victim vis-à-vis the objectives of the criminal justice system. It is proposed to examine how far the present legal framework in India is sufficient to protect the victims of crimes. The study also attempts to examine how far the existing legal frame work in India conforms to the statutory norms and standards that are set by the U.N. Declarations and to compare and appreciate the position of victims in other countries. A section of the proposed research shall be devoted to evaluate the contribution of judiciary in ameliorating the plight of the victims of crime .

Restitutive justice and victims right to adequate compensation shall form an essential part of the proposed work. The researcher also proposes to analyze and appreciate the role of restorative justice as a panacea to ameliorate the plight of the victims of crime.

[1] Justice Krishna lyer, Hon'ble Judge, Supreme Court of India in his writing "The Criminal Process and Legal Aid", Published in Indian Journal of Criminality. P.10

LITERATURE REVIEW

A good number of studies have been undertaken with respect to the issue of the victims of crime. This shows great concern and sensitivity of the research scholars with respect to the issue and its impact on the mental and emotional well being of the victims of crime. The researcher has gone through a variety of literature comprising books, articles, committee reports and landmark judgments of the Indian Supreme court. To begin with, the researcher has made a comprehensive study of the committee report focusing on the issue of victims' rights. Committee on Reforms of Criminal Justice System popularly known as Malimath Committee in its report of (March 2003) ,recognized that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration. It has made a series of recommendations (Para 6.8) to ensure justice to the victims. It Proposes that the victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.

Sandra Walklate (2007), through her work highlighting the problems of the victims of crime has proposed that the victim be furnished with information at the investigation and trial stages, thereby facilitating victim's active participation in judicial process. In addition he must be provided monetary relief and compensation as well as other facilities like medical and legal aid, counseling and rehabilitation. These steps will go a long way in ensuring the faith of people in our criminal justice delivery system by sending a message that the state is taking all possible measures to ensure that justice must not only be done but it seems to be done.[2] The Right to Information Act, 2005 is an important legislation which may provide an important instrument at the hand of victim to secure information regarding certain entries in diaries and record concerning the progress of investigation and trial[3].

Braithwaite, J. (1999) in his work appreciated the need for a victim-oriented approach to criminal prosecution, and also highlighted on the continuing trauma without the services and support they need, in addition to lowered academic performance , decreased work productivity and severe loss of confidence [4]
Austin Sarat in his work has raised the concern for disconnection between truth and evidence as the stark reality of the legal system.[5]

Professor Bajpai in his work on victim justice –A paradigm shift in the Indian Criminal Justice System (2017) has extensively talked about the fate of victims who are exposed to the imbalances and prejudices embedded in the Indian criminal Justice system.

Realizing the gravity of the problem the United Nations General Assembly in1985 adopted a 'Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power'. [6] The Declaration envisages the basic norms to be adhered to for the recognition of victims' right to information, treatment, restitution and compensation. To ensure that the victims are not neglected by the society, the Declaration gives a comprehensive definition of victim. According to the Declaration, 'victim' includes any person who, individually or collectively has suffered harm,

[2] Handbook of Victims and Victimology, UK: Willan Publishing, p-96.
[3] Section 8(h) of the Right to Information Act, 2005
[4] Braithwaite, J. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts"
[5] Austin Sarat, Law, *Violence, and the Possibility of Justice*, 2001, New Jersey: Princeton University Press, p-83)
[6] UN General Assembly Resolutions 40/34 on 29th November, 1985

including physical or mental injury, emotional suffering, economic loss or substantial impairment of his fundamental rights, through acts or omissions that are in violation of criminal laws operative within. The provisions are applicable to everyone, irrespective of race, age, color, nationality, religion etc. The Declaration recognized the four major components of rights of crime victims-

1. Access to Justice and Fair Treatment[7]
2. Restitution[8]
3. Compensation [9]
4. Assistance[10]

Indian judiciary has on several occasions expressed its concern on the plight of innocent victims of crime. It was rightly pointed out by Apex Court, "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature"[11]

RESEARCH GAPS.

Status of victims in India is a matter of grave concern. Though there has been a small group of writings concerned with the impact of crime on the victims, not much has been written about the impact of criminality and post crime effects on the victims of crime. How the insensitivity and indifference at the hands of the law enforcement agencies especially the police can influence the emotional, behavioral and socialization patterns of the victims. Despite the statutory rights granted to the victims, their condition seems deplorable. All this results in double victimization of the victims. After reviewing the literary sources on the issue, the researcher submits that there is no concrete work which exclusively deals with the prospective rights of the victims on the basis of which they could be streamlined and rehabilitated into the society. The researcher further submits that there are no specific laws to protect the rights of the victims of crime, who are subject to double victimization without any succor. In the absence of rehabilitative measures, they become the potential victims of another crime which are likely to be committed against them. Through this research, the researcher endeavours to fill up the research gaps with respect to the issue by suggesting alternative measures.

STATEMENT OF PROBLEM

The criminal justice system in India being adversarial in nature is strongly tilted towards the accused .There is presumption of innocence even when the accused appears to be palpably guilty. The prosecution has to discharge the burden of proving the guilt of the accused beyond reasonable doubt. Victim despite being the primary and direct witness to crime is treated as a junior partner of the police and the prosecution in India. His participation in the post crime investigation and procedures is minimal and negligent. Prosecution being carried on by the Public Prosecutor, victim has no active role to play. The adversarial system in India ensures maximum rights to the accused and reduces the victim to a mere passive spectator to the investigation and court proceedings being undertaken by the police and the courts respectively. Though various statutory rights have been

[7] Clauses 4 & 5 of UN Declaration
[8] Clause 8 of UN Declaration
[9] Clause 12 of UN Declaration
[10] Clause 14 Part B of UN Declaration
[11] *Ratan Singh v. State of Punjab*, 1979 SCC 719

guaranteed to the victim, practically speaking the rights assigned to the victim are subservient to the will and monopoly of the prosecution. In certain cases the court may permit an advocate authorized by the victim to assist Public Prosecutor, but such advocate does not have independent right to represent, hence the role of private counsel in such cases is more or less that of a junior counsel who assists a senior. He cannot act independent of Public Prosecutor. Though the victim being the affected party has a substantial interest and can intervene when the bail is liable to be cancelled but his right is not fully recognized by the law. Section 439(2) of the Cr.P.C, may allow a victim to move to the Court for cancellation of bail, but the action thereon depends very much on the stand taken by the prosecution. He has no direct say in the matter of bail. Similarly prosecution can seek withdrawal at any time during trial without consulting the victim, hence victim seems to have no right to challenge the prosecution decision at the trial stage itself. Apart from all this, high acquittal rates, accumulation of cases and delay in disposal of cases, the hostility of witnesses coupled with the unwillingness of several persons to depose, disjunction and disconnection between truth and evidence amount to secondary victimization of the victim. Lack of assistance and inadequate compensation to the victim adds to his wounds and worsens his chance of being rehabilitated and assimilated in to the society. Through this work it is being proposed that necessary changes are required to be made in the existing law to make victim play an active role in prompt investigation and effective prosecution of the case. The effective participation must ensure that the victim does not feel neglected. This can be done by giving victim the right to information relating to investigation and trial

OBJECTIVES

To understand and analyze the position of the victim vis-à-vis the objectives of the Criminal justice system, the study is undertaken with the following objectives:

1. To study the rights of victims under the Criminal Justice system in India

2. To examine how far the existing legal framework in India conforms the norms and standards that are set by the U.N. Declaration and other international conventions.

3. To compare the position of victims in other countries and to ascertain the prevailing international trends.

4. To study the Judicial decisions pertaining the rights of the victims.

RESEARCH QUESTIONS

1) Whether Indian Criminal justice system adequately addresses the rights of the victims?
2) Whether Indian Criminal Justice system in its existing legal framework incorporates the rights of victims as set out in International Conventions?
3) Whether the current legal framework in India adequately enforces the rights of victims?

SIGNIFICANCE OF STUDY

The significance of the present study is basically to understand the reasons behind the neglected state of victims, who are forced to lead a life of helplessness and insecurity without any assurance of rehabilitation. Through this study the researcher will endeavour to draw the attention of the policy makers to the exclusiveness and seriousness of the issue and persuade the government to take some effective steps in the form of specific legislation for the welfare and well being of the victims. In this background it is proposed to examine how far the present legal framework in India is sufficient to protect the victims of crimes. The study also attempts to evaluate the contribution of judiciary in ameliorating the plight of crime victims.

RESEARCH METHODOLOGY

In accordance with the objectives of the present study, the methodology adopted for this research is doctrinal. In this pursuit, an endeavor would be made by the researcher to undertake the content analysis of statutory provisions,judicial precedents,articles and other literature available. In course of analysis original sources such as Law Commission Reports, High Power Commission Reports both at national and international level, decisions of Supreme Court and other courts in India will be examined to understand the present policies of the government. For critical appraisal, the pertinent secondary sources such as juristic works will be consulted.

TENTATIVE CHAPTERIZATION.

Chapter I –Introduction: Rights of Victims In India

This chapter would deal with introduction in which the problem profile will be highlighted. Also an elaborate reference would be made about the position of victims in the Indian legal system from historical perspective with special reference to the ancient, medieval, modern and post modern phases.A detailed reference would be made about the penal policy in India, and the different theories of punishment on which it is based. The chapter would discuss the rights of victims in brief, with special reference to the rights under the Criminal Procedure. Also, various other legal rights guaranteed to them under the different legislations in India and under various International instruments and covenants which detail the rights of victim would form an essential part of the chapter. A detailed categorization of the different kinds of victims would form an essential part of the introductory chapter. Position of the victims in other countries would also be examined to appreciate the legal position of the victims in India. The researcher would discuss the statement of problem at hand, need for its study, its objectives, hypothesis and methodology to be adopted during the entire research process.

Chapter II- Conceptualization: Victim,Victimization and Victimology

The chapter would extensively cover the concept of victimology and victimization.Also the different categories of victims would be covered within the purview of the chapter.Theories of justice and rights of victims which need statutory sanction would form the core focus of the present chapter.

Chapter III- Rights of Victims: International Standards

This chapter would study and examine the rights of victims under various international instruments.

Chapter IV- Historical perspective of rights of the Victims

The chapter would deal with the historical perspective of the rights of the victim, which would trace the evolution of the rights of the victim in India since ancient, medieval, modern and post modern times

Chapter V- Rights of Victims: Constitutional Jurisprudence.

This chapter would deal with the constitutional rights of the victims under the constitution of India

Chapter VI-Rights of Victims: The Criminal Justice System

The chapter would include a detailed summarization of the rights of the victim under the Criminal Justice System in India. It would discuss in length various rights guaranteed to the victim under the Indian Penal Code 1860**,** Code of Criminal procedure 1973 .The chapter would also cover a study of the relevant provisions of the Indian Evidence Act 1872 **,**Probation of Offenders Act 1958, The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), The Protection of Women from Domestic Violence Act, 2005, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989. Various rights guaranteed to the victim under the Criminal Law Amendment Act, 2013 would also be extensively covered under the chapter.

Chapter VII- Rights of Victims: Judicial Approach

Under this chapter a thorough case study would be conducted to get the perspective of the judiciary with respect to the rights of the victims so that a rational assessment of the overall response of the Indian Judiciary to the issue of the victims of crime could be made by the researcher.

VIII- Conclusion and Suggestions

This chapter would deal with the suggestions and recommendations to the policy makers so that the deplorable condition of the victims of crime could be ameliorated and their assimilation in the society could be effectively ensured. Suggestions such as guarantee of safe environment to the victim, ensuring privacy and dignity to the victim, active participation of the victim in the plea bargaining proceedings, recognizing free legal aid and assistance to the victims and right to be informed about the developments of the case proceedings as the statutory rights. Apart from the aforestated suggestions, number of recommendations would be suggested which may go a long way in guaranteeing the victims of crime their rightful due.

BIBLIOGRAPHY.

BOOKS

1. Ahmad Siddique,, *Criminology*, Afzal Qadri.,ed., 5th edn., (Lucknow: Eastern Book Company, 2007)

2. Antony Duff (2003), "Restoration and Retribution" In: Andrew Von Hirsch, Julian V. Roberts and Anthony E. Bottoms, Kent Roach, and Mara Schiff, (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, (2006), (edn.2nd), Portland:Hart Publishing.

3 Aparna Srivastava, (1999), *Role of Police in a Changing Society*, New Delhi: A.P.H Publishing Corporation.

4. Ashworth, A. (2002) "Responsibilities, Rights and Restorative justice"*British Journal of Criminology*, Vol.42.
5. Bazemore, J. (2002), *Restorative Justice and Responsive Regulation*, New York: Oxford University Press.
6. D.D, Basu, *Constitutional Law of India* (Nagpur: Wadhwa & Co.,2003)

7. Dalbir Bharti, *The Constitution and Criminal Justice Administration*, (New Delhi, APH Pub.,New Delhi, 2005),

8. Chandra Sen Pratap Singh, *Victims of Crime,* (New Delhi: Deep & Deep Pub Pvt Ltd, 2010)

9. Doak, J, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Parties.* (Oxford, UK: Hart Publishing, 2008)

10 .Dr.K.N.ChandrashekharanPillai, R.V.Kelkar's *Criminal Procedure*, 5th ed., Eastern Book Company, Lucknow (2008)

11 . G.S. Bajpai, *Victim's Rights and Criminal Procedure Models,* in G.S. Bajpai (ed), *Criminal Justice System Reconsidered* (ed), (New Delhi, Serials Publications, 2012)

12. Madhava Menon, N.R. *Victim Compensation Law and Criminal Justice: A Plea for a Victim-Orientation in Criminal Justice*. In Vibhute, K.I. (ed.) *Criminal Justice – A Human Rights Perspective of the Criminal Justice Process in India.* (Lucknow, Eastern Book Company, 2004)

13. V.N. Rajan, *Victimology in India,* (New Delhi. Ashish Publishing House, New Delhi, 1995)

14.V.N. Rajan, *Victimology in India*, (New Delhi, Allied Publishers, 1981)

15 .Wiliam Tallack *Reparation to the injured; and right of the victims of crime to compensation* (London, Wertheimer Lea K Co 1900)

ARTICLES

1. A.H.Mondal, "Crime Victims and Their Treatment", *Central India Law Quarterly,* Vol. XIV, (2001)

2 . Alec Samuels : *"Compensation for Criminal Injuries in Britain",* University of Toronto, *Law Journal,* Vol 17 (1967)

3. Doak Jonathan, 'Victims Rights in Criminal Trials: Prospects for Participation', *Journal of Law and Society,* Vol.32 (2005)

4. Ian Edwards, 'An Ambiguous Participant' [2004] *British Journal of Criminology*

5. Justice Krishna lyer, "Victimology- The Victim of Criminological Neglect," *IJCC, 15* Dec.1994

6. K.D. Gaur , "Justice to Victims of Crime", XXIX *Ind. Bar. Rev.* 2002

CODES

1. The Indian Penal Code, 1860

2. The Code of Criminal Procedure, 1898

3. The Code of Criminal Procedure, 1973

4. The Code of Criminal Procedure (Amendment) Act, 2005

5. The Code of Criminal Procedure (Amendment) Act, 2008

6. The Criminal Law (Amendment) Act, 2013

REPORTS

1. Law Commission of India 42nd Report, on Code of Criminal Procedure, 1898.

2 Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973

3 Law Commission of India, 41st Report on *Indian Penal Code,*1860

4 Report of the Committee on Reforms of the Criminal Justice System, Vol-I: Government of Home Affairs, 2003)